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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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NOV 29 1993

FCC - MAIL ROOM

In the Matter of

Guidelines for Evaluating the  
Environmental Effects of  
Radiofrequency Radiation

ET Docket No. 93-62

**RESPONSE TO REPLY OF VILLAGE OF WILMETTE, IL**  
**TO UNDERSIGNED'S PETITION OF 1 NOV 93**

To The Commissioners:

WHEREAS:

1. The undersigned has filed by mail on 1 NOV 93 a Petition to the Commission urging adoption of RF exposure standards proposed by the American National Standards Institute in association with the Institute of Electrical and Electronics Engineers and further urging adoption of a preemption order directing that local government shall have no authority to enact or enforce any law or ordinance relating to RF exposure against any Commission licensee or any subscriber or user of a radio communications service licensed by the Commission;
2. The undersigned delivered a copy his petition to the Village of Wilmette, IL, of which he is a resident, by facsimile transmission on 1 NOV 93;
3. The Village of Wilmette, IL, by a unanimous vote of its Board of Trustees on 23 NOV 93 after receiving the undersigned's response to a Reply Memorandum contesting both the grounds and the request of the undersigned's Petition, is filing its Reply Memorandum with the Commission;
4. The President of the Board of Trustees of the Village of Wilmette directed the Corporation Counsel at the request of the undersigned to include with the Village's mailing of its Reply Memorandum copies of this Response for the convenience of the Commissioners so that both documents shall arrive together at the Commission - it being understood that the Village disagrees with the contents of this Response;

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NOW, THE UNDERSIGNED PRESENTS HIS ARGUMENTS -FIRST PRESENTED TO THE BOARD OF TRUSTEES OF THE VILLAGE OF WILMETTE - AGAINST THE REPLY BEING FILED BY THE VILLAGE:

### TVRO ANTENNAS

The memorandum focuses on the subject of TVRO antennas; however, it does not explain accurately the Village's position on the issue. For example, it does not explain why there has been a long and protracted lawsuit brought against Robert and Sharron Bussell - which to this day is still unresolved nor does it state the amount of money spent both by the Bussells and by the Village. At the very least, the Commission should be told the number of hours spent by the Corporation Counsel and other Village employees and officers in preparing and prosecuting the case against the Bussells.

Second, there was another case -or at least a police citation -brought about the same time the Bussells were cited against a man whose name I believe was Fred Sachs. He lived in a house across the street from the East side of Edens Expressway. One of the so-called *concerns* at the time was that the sight of an antenna on his house would divert motorists and cause accidents on the Expressway.

Then, of course, there was the lawsuit that was threatened against my wife and me. This prospect was raised when I refused to file an application for a special-use permit. My ground for refusal was that I had a First Amendment Right of Free Speech which was being infringed by that demand. As a result of my refusal, the Wilmette Police Department was ordered to conduct an investigation of my wife and me - which we discovered when our friends and neighbors reported that they had been interviewed by the Police regarding our activities. This investigation presumably was halted when I complained about it in a public meeting of the Board of Trustees.

Last, the Village neglects to describe how it regularly publishes notices in the *VILLAGE COMMUNICATOR* warning residents not to install satellite TVRO antennas with reflectors bigger than six feet in diameter without Village permission. The examples described in the Village's draft Reply Memorandum of permitted installations are only for commercial or religious use. The Village does not explain why it requires a non-commercial applicant to notify all property owners within 250 feet of a proposed antenna and go through all of the expense and inconvenience of having to appear before the Zoning Board and -if necessary- the Board of Trustees in order to practice First Amendment Rights. Nor does the Village explain why it does not cite the footnotes to the FCC's Satellite TVRO Antenna preemption order which describe the need for 8 -10 foot diameter reflectors.

It is my opinion that if FCC were advised of all of these facts -as well as others omitted here-, it could conclude that the Village of Wilmette had an active program to restrict the use of satellite TVRO antennas that certainly infringed both the letter and spirit of the FCC's pre-emption order - if not the Civil Rights of its citizens. Since the Village has the same duty of candor regarding

submissions to the FCC that I, as an attorney and member of the Federal Bar, do; it should consider carefully adding a fuller description of these facts to its reply so as to make it clear to the FCC that the Village is ready, willing and able to prosecute any violation of its ordinances regulating radio antennas and related equipment.

## HOME RULE

The Village's Reply Memorandum opens with a statement describing that Wilmette is an Illinois Home Rule municipality with *largely the same authority as the state legislature to exercise police powers within its jurisdiction, unless specifically preempted by a state statute or the state constitution*. Since the Village has raised the point, then it has an obligation to state whether it believes that its police powers may be preempted by federal regulations (i.e. FCC preemption orders), federal statutes and the U.S. Constitution. Should the FCC adopt the IEEE/ANSI emission standards, what will be the action of the Village regarding Resolution 93-R-34? I believe that the Village's Reply Memorandum should clearly state its position.

In addition to answering the question about federal preemption regarding Resolution 93-R-34 (which passed by only a 4-3 vote), the Village has an obligation to inform the FCC as to what its position on preemption would have been had the alternative resolution (*total ban under the doctrine of 'prudent avoidance'*) been approved. Suppose that one of the four trustees who voted for the resolution changed sides, would the Village exercise its police power to stop an FCC licensee from erecting a transmission site within the Village? Both the FCC and the citizens of Wilmette are entitled to know the answer to this question.

## RESOLUTION 93-R-34

The description of Resolution 93-R-34 which appears in the Reply Memorandum suggests that the Resolution is only advisory. The reason I question whether the Resolution is only advisory is the following quotation taken from President Jacoby's 14 OCT 93 letter published in the *Wilmette Life*:

*The Village's pre-resolution ordinances regulate cellular antennas only insofar as they make these facilities "special uses" under the zoning ordinance. The resolution tightens up this regulatory approach. **It sets forth the maximum radio signal which should be allowed.** And it directs that cellular antennas should not be created in residential districts or within 500 feet of schools, preschools or day care centers. To our knowledge, **the limits established** by the Resolution are by far the most stringent which exist anywhere.*

*The resolution thus **implements** a policy of "prudent avoidance." It addresses the health concern while accommodating other interests. This is my rationale for supporting it. **(emphasis added)***

I believe that any fair reading of President Jacoby's letter would conclude that Resolution 93-R-34 is a mandate and that the mandate will be enforced.

The description of the so-call RF radiation standards is misleading because it seeks to legitimate them by associating them with Ameritech. While Ameritech might be prepared to accept them, it did not recommend them.

It should be recalled that the Board of Trustees originally hired an outside consultant to conduct an emission survey. It was only after Dr. Allen Taflove, others and I challenged successfully both the content and the methodology of that report that the Board reverted back to an Ameritech engineering report showing planned field strength coverage. The FCC should be informed that had the outside consultant's conclusions and recommendations been adopted, then no FCC licensee could provide required coverage under Resolution 93-R-34.

Further, no legislation is enacted in a vacuum. The FCC is entitled to know of the atmosphere under which Resolution 93-R-34 was debated. The Reply Memorandum should at least indicate that Trustees who voted in favor of the Resolution and against a total prohibition were subjected to verbal abuse and at least one physical threat. The reason this information is important is because it will indicate to the FCC how the Resolution is likely to be enforced.

### CONCLUSIONS AND RECOMMENDATIONS

While I do not take personal offense to the remark, I believe it is inaccurate to state that my *Petition seeks to have this Commission exercise sweeping preemption powers based on an erroneous view of the actions of municipalities, and of Wilmette in particular*. I have a point of view on the subjects of Civil Rights and local regulation of interstate commerce which is not new to the Wilmette Board of Trustees. While my views may be unpopular and some of descriptions in my Petition may contain errors - which no doubt others and I will uncover by additional research, it is not my intention to deceive either the FCC or the Board of Trustees.

Underlying the foundation of my Petition to the FCC are two anchors 1) my belief in safeguarding our Right of Free Speech against infringement and 2) freedom of interstate commerce from unwarranted local regulation. Wilmette's Resolution 93-R-34 is a proper candidate for federal preemption on both grounds for the reasons stated in my Petition and here.

While the Village's proposition that *the control of public exposure to RF radiation is a uniquely local problem* is debatable, an affirmative view still would not support the conclusion that *the standard of public exposure to RF radiation is a uniquely local problem*. Here, the Village errors in extrapolating its *responsibility* to its presumed *capability*. In my judgment, the Village's role should not be to establish a local standard; but, it should be to implement effectively a national standard.

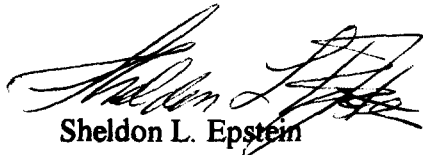
On a positive note and for the reasons stated above, I wish to present the following recommendations to the Board of Trustees for their consideration:

1. Amend Resolution 93-R-34 to -
  - a. Adopt the ANSI/IEEE standards until the adoption of standards by the FCC,

- b. Remove the restriction that a transmitter site not be within 500 feet of schools, preschools, or day care centers, and
  - c. Place the burden of testing for compliance on the Village instead of the licensee.
2. Amend the Satellite TVRO Antenna Zoning Ordinance (§6.4.12) to permit reflectors up to ten feet (instead of six feet) as a matter of right.

Were the Board of Trustees to adopt these recommendations, then I could support an effective program to accommodate radio technology in Wilmette.

Respectfully submitted,



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